IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 63/2006

Shri Gopal Chari and another. ..... Appellants.

V/s.

1. Shri Tito Vaz and another. ..... Respondents.

Ms. P. Naik, Advocate for the appellants.

Mr. A.F. Diniz, Advocate for the respondents.

CORAM : P.V. KAKADE, J.

DATE : 13th November, 2006.

P.C.

Heard learned Counsel for the appellants. Perused the record. The appellants-defendants have preferred this appeal against the Judgment and Order passed by the Addl. District Judge, South Goa, Margao, dismissing their appeal and confirming the Judgment and Order passed by the trial Court who has partly decreed the suit allowing prayer clauses (a) and (b) and dismissing the defendants'-appellants' counter-claim.

2. The plaintiffs filed a suit alleging that the property named “CURNIBAGA” or “CURNOBAGAT” or “PINPLABAT” described in the Land

Registration Office of Quepem under No.14.378 and enrolled in the Taluka Revenue Office under No.52 belonged to their ancestors and after death of one Ludovina Monteiro, in the inventory proceedings, 1/3rd of the said property was allotted to the plaintiffs No.1 and 2 and the remaining 2/3rd was alloted to other heirs. That there was a partition effected between the plaintiffs and other co-owners wherein the property "Curnibaga 1st adicao" was alloted to the plaintiffs, which is the suit property. The suit property is surveyed under No.70/10 and recorded in the name of Antonio Tito Vaz and there are about 25 houses, one of which is occupied by the defendants and also comprised of fruit bearing trees. It was further alleged that the plaintiffs enjoyed yield of the trees and were in continuous and peaceful possession thereof for more than 100 years and the defendants on 18.3.80, dumped laterite stones in the suit property near their house and further started laying foundation to build the house without taking any permission from the plaintiffs. Hence the suit for perpetual injunction came to be filed. The defendants contested the suit, inter alia, denying the the allegations made by the plaintiffs. The defendants also filed counter-claim on the ground that the appeal filed by them against the order of the Mamlatdar in the DC case had been dismissed and as such, the name of the plaintiff No.1 was sought to be deleted from the occupant's column of Survey No.70/10.

3. The learned trial Judge, after hearing both the parties and on the basis of the available evidence on record, came to the conclusion that the plaintiffs had proved that the defendants obstructed the plaintiffs' peaceful possession and enjoyment of the suit property and as such, they were held entitled for perpetual injunction against the defendants. The counter-claim of the defendants came to be dismissed, mainly on the ground that it was barred by limitation. Moreover, it was also found that the defendants had not pleaded specifically the ground on which the counter claim was based and, therefore, it was held that it was not a counter claim in compliance with Order VIII, Rule 6-A, 6-B and 6-C of the C.P. Code and the suit came to be partly decreed issuing perpetual as well as mandatory injunction against the defendants, while their counter claim came to be dismissed. An appeal was preferred to the District Court. The learned Addl. District Judge, after hearing both the parties, concurred with he findings recorded by the trial Court and dismissed appeal filed by the appellants.

4. The learned Counsel for the appellants submitted that no proper issues were raised, as a result of which the defendants were deprived of the opportunity to lead evidence and cross examine the witnesses of the plaintiffs on the issues involved. It was further submitted that there was no

evidence on record to support the findings of the Courts below to hold that the plaintiffs' title and possession to the suit property was proved. It was submitted that both the Courts below did not appreciate the documentary evidence led by the defendants and the substantial questions are sought to be raised on the basis of these submissions.

5. However, perusal of the entire record vis-a-vis the so called substantial questions of law, it is to be seen that this submission is devoid of any merit. Initially, it may be noted that all the questions which are sought to be raised, are unfounded, in the sense that the issues are seen to be raised properly and the evidence of both the parties appears to be appreciated in proper perspective. There is no indication from the Judgments of both the Courts below to show that no documents of the defendants were appreciated. On the other hand, the Judgment of the lower Court shows that the defendants' evidence was properly appreciated and discarded on merits. A plain reading of the Judgments of both the Court below shows that the plaintiffs were in a position to establish their ownership and title over the suit property and the defendants failed to establish ownership right over the suit property and also failed to make out their possession which aspect went against the appellants-defendants and the suit came to be decreed by both the Courts below.

6. I do not see any infirmity in the Judgments and orders passed by the Courts below and, as such, I hold that the appeal is devoid of any merit and, therefore, stands dismissed with no order as to costs.

P.V. KAKADE, J.

ssm.